

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CECILIA CATHERINE GUTIERREZ,

Plaintiff,

v.

RICHARD A. HANDLON CORRECTIONAL
FACILITY, et al.,

Defendants.

Case No. 1:19-cv-425

HON. JANET T. NEFF

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MEMORANDUM OPINION AND ORDER

Plaintiff, proceeding pro se, initiated this case on June 3, 2019 by filing a Complaint for Employment Discrimination pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff was permitted to proceed in forma pauperis (ECF No. 5). The Magistrate Judge performed an initial screening of Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A(b)(1), and, on June 19, 2019, issued a Report and Recommendation (R&R, ECF No. 7), recommending that Plaintiff's Complaint be dismissed. The Magistrate Judge determined that Plaintiff's Complaint "contains various factual allegations but does not state how each defendant was involved and what each defendant did that caused the Plaintiff harm or violated the Plaintiff's rights" (*id.* at PageID.69). The Report and Recommendation, which noted the applicable 14-day period for filing objections, was duly served on the parties.

Plaintiff subsequently wrote the Court, asking whether it was "possible to just amend the complaint instead of filing an appeal" (ECF No. 8 at PageID.71). Plaintiff indicated that "[i]f amending the complaint is not acceptable I would like to request the extension of time to prepare

and file a response for the appeal” (*id.*). This Court issued an Order on July 12, 2019 that extended the deadline for Plaintiff to file any objections to the Report and Recommendation to July 26, 2019 (ECF No. 9). On July 26, 2019, Plaintiff filed an Amended Complaint (ECF No. 10).

The Court determines that Plaintiff was permitted to amend her pleading “once as a matter of course,” *see* FED. R. CIV. P. 15(a)(1)(B), and that the screening of her original Complaint did not ameliorate this right. *See Jones v. Bock*, 549 U.S. 199, 214 (2007) (“[T]he PLRA’s screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself.”); *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013) (holding, “like every other circuit to have reached the issue, that under Rule 15(a) a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA”). As the June 19, 2019 Report and Recommendation concerns Plaintiff’s original Complaint, the Court will reject it as moot. Therefore:

IT IS HEREBY ORDERED that the Report and Recommendation (ECF. No. 7) is REJECTED as moot.

Dated: August 8, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge